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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,465	10/30/2003	Rebecca Willey Griffin	18872	7960

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KIMBERLY-CLARK WORLDWIDE, INC.
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NEENAH, WI 54956

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,465

Applicant(s)

GRIFFIN ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 14, 2006 has been entered.

Response to Amendment

2. Applicant's amendment filed on March 14, 2006 has been entered. Claims 11 and 17 have been amended. Claims 1-22 are currently pending with claims 1-10 withdrawn from consideration. Applicant's amendment is sufficient to overcome the 35 USC 112 2nd paragraph rejections set forth in section 3 of the last Office Action because the "as-formed" limitations in claims 11 and 17 have been deleted.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Abuto et al. (U.S. Patent No. 5,804,021).

With regard to claims 11 and 17, Abuto et al. disclose a fibrous nonwoven laminate that exhibits elastic properties in at least one direction (Abstract). The facing layer comprises a continuous fiber spunbonded web made from bicomponent fibers (column 7, lines 25-44). The web may be thermally point bonded in a pattern (column 9, lines 30-33). The web is provided with extensibility in the cross machine direction by forming slits that are parallel to the machine direction (See Figures 1 and 2). In its unstretched condition, the web appears to have a uniform basis weight, since there is no pattern of varying density or weight. Abuto et al. do not specify a fiber diameter in microns for the spunbonded web. However, spunbonded fibers are generally greater than 10 microns, unless otherwise specified as fine fiber spunbond (See US 2004/0121110 to Schmidt et al. at paragraph 15). Also, Abuto et al. disclose using 2 denier polypropylene/polyester bicomponent fibers (Example 1, column 13, lines 57-58). Denier can be converted to fiber diameter in microns using the teachings in paragraph 28 of US 2005/0079987 to Cartwright et al. The density for polyester is 1.38 g/cc and the density for polyethylene is 0.95 g/cc (See Adanur, Wellington Sears Handbook of

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Industrial Textiles, at p. 563). Assuming a 50/50 ratio of materials (density averages to 1.165 g/cc), a 2-denier bicomponent fiber would have a fiber diameter of about 15.6 microns. Even if one were to assume a greater presence of polyester (which would produce a smaller fiber diameter) of up to 100/0 (density equals 1.38), the fiber diameter would still be about 14.3 microns. So it is clear that the fibers of Abuto et al. anticipate the claim limitation of fiber diameter greater than 10 microns. It is also noted that Abuto et al. teach the fiber denier is not limited to 2, but may be up to 6 denier (column 13, lines 3-4).

With regard to claims 11-13 and 17-19, although Abuto et al. do not explicitly teach the limitations of force required to stretch the web in the cross machine direction as compared to the force required to stretch the web in the machine direction, it is reasonable to presume that said limitations are inherent to the invention. The nonwoven web of Abuto et al. uses a spunbonded web with crimped fibers that is thermally point bonded in a pattern and it is processed so that it is capable of stretching in the cross machine direction. There may be some difference in the processing steps used to create the final product. However, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP § 2113 [R-1]. In this case, it is reasonable to assume the final product of Abuto et al. possesses Applicant's claimed property

limitations for cross machine direction stretch. The burden is upon the Applicant to prove otherwise. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Abuto et al. because the reference teaches how to vary the stretching capability of the fabric (See column 11, line 64 – column 12, line 56). Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

With regard to claims 14 and 20, the fibers of the web are provided with latent crimps (column 8, lines 20-42). With regard to claims 15, 16, 21, and 22, the spunbonded web is bonded to an elastic film or nonwoven web (column 4, lines 27-30).

Response to Arguments

6. Applicant's arguments filed March 14, 2006 have been fully considered but they are not persuasive.
7. Applicant asserts the claims now recite the nonwoven web "consists essentially of" thermoplastic fibers and a plurality of thermal bond points in a pattern. The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). Absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." MPEP 2111.03 [R-3]. Applicant's arguments fail to point out how the phrase "consisting essentially of" further limits the claims.

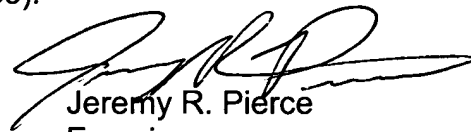
Similar to the present invention, Abuto et al. teach a material that is useful as an elastic laminate in medical fabrics and absorbent articles. Furthermore, Applicant makes no specific argument specifically addressing the prior art rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeremy R. Pierce
Examiner
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April 14, 2006